IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1550 OF 2004

Union of India, through the
Deputy Commissioner of Customs
(P), Mumbai. ... Applicant

versus

Hasan Mohd.Amin Patel & anr. ... Respondents

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Mr. H.V. Mehta, for the Applicant.

Mr. Shekhar Ingavale with Mr. Yogesh Nakhwa, for Respondent No. 1.

Mr. A.S. Gadkari, A.P.P., for Respondent No. 2.

...

CORAM : A.M.KHANWILKAR,J.

23rd December 2004

P.C.:

. Heard Counsel for the parties. This petition takes exception to the order dated 4th February 2004 passed by the Sessions Judge, Raigad at Alibag granting anticipatory bail to the Respondent No. 1 herein in relation to offence punishable under the provisions of the

N.D.P.S.Act. The reason which has been noted by the Court below for granting such relief to the Respondent No.1 is that the owner of the premises has already been released on bail. That by itself cannot be a ground for releasing the Respondent No.1 on bail. Counsel for the Respondent No.1, however, relies on the fact that the Respondent No.1 was not named as accused when the anticipatory bail application was moved. Whereas, at the relevant time, summons under section 67 of the N.D.P.S.Act was issued to the Respondent No.1 for eliciting information from him in respect of the offence in question. Apprehending false involvement in the case, the Respondent No.1 moved for being released on anticipatory bail.

. To get over this position, Mr. Mehta for the Applicant placed reliance on the record to indicate that in the information received by the Department, name of the Respondent No.1 was revealed. Besides, reliance is placed on the statement of the co-accused, Vijay Shetty. His evidence indicates complicity of the Respondent No. 1 in the offence in question.

. None of these arguments can be accepted, as it is rightly contended on behalf of the Respondent No. 1 that the confessional statement of the co-accused can be used only for the limited purpose. Reliance is rightly placed on the decision of the Rajasthan High Court reported in 1995 Cri.L.J. 3947 in the case of Kishan Singh v. State of Rajasthan to buttress this position. As no other positive material has been placed on record to corroborate the complicity of the Respondent No. 1, except the bare statement of the co-accused, no fault can be found with the order releasing the Respondent No. 1 on bail. Although it is vaguely alleged in the application that the Respondent nO. 1 is absconding, no material facts are provided in that behalf. The bail order was granted by the lower Court in February 2004 and the present application has been filed on 29th March 2004 in this Court. There is nothing on record to show that within this one month's time, any attempt was made by the Department to call upon the Respondent No. 1 to attend the office and he has failed to do so. In the circumstances, this application deserves to be rejected. Ordered accordingly.

. It will, however, be open to the Applicant to move this Court for cancellation of bail and for appropriate directions, in the event the Respondent No. 1 fails to report for the purpose of investigation as and when called upon, even in case of one default committed hereafter by the Applicant. The Officer shall give acknowledgement to the Respondent No. 1 as and when the Respondent No. 1 would attend the office as per the intimation given in that behalf.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)